HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 390 of 2003 (SS)

Inderjeet s/o Sri Bali Ram, Resident of Police Lines, Pithoragarh ..... Petitioner

Versus

1. State of Uttaranchal through Secretary, Ministry of Home Affairs, Dehradun
2. Deputy Inspector General, Kumaun region, Nainital
3. Superintendent of Police, Pithoragarh, District Pithoragarh ..... Respondents

Sir D.S. Patni, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 25.2.2006

Hon'ble Rajesh Tandon, J.

Heard Sri D.S. Patni counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 13.12.1999 passed by the respondent no. 3 and order dated 29.2.2000 passed by the respondent no. 2.

Briefly stated the petitioner was initially appointed as Constable in the U.P. Police Fire Service in the year 1978. He was promoted as Head Constable in 1988. on 9.10.1999 the petitioner was posted in the Fire Station, Pithoragarh. On that date duty of counting was assigned to Head Constable Dhan Singh. At that time five constables were absent from the Fire Station and the petitioner brought this fact to the notice of the

Head Constable who was responsible for counting. The petitioner also made entry to this effect in the General Diary and information to this effect was also given to the circle Officer. A show cause notice was issued to the petitioner on 30.11.1999 alleging therein that at the time of counting done by one Dhan Singh, the petitioner was shouting loudly and causing hindrance in his work. It was also alleged in the said show cause notice that the conduct of the petitioner is symbol of negligence, indiscipline and insubordination.

The petitioner categorically replied the said show cause notice on 6.12.1999. The respondent no. 3 Superintendent of Police, Pithoragarh passed the censor entry against the petitioner vide order dated 13.12.1999. The petitioner being aggrieved by the order-dated 13.12.199 passed by the respondent no. 3 preferred Appeal to respondent no. 2, who dismissed the appeal. The petitioner has also submitted that vide order dated 21.12.2002 the petitioner was given promotional scale of 5500-9000 with effect from 14.12.2002 but he was not being paid the promotional scale.

The respondents filed counter affidavit. In the counter affidavit the respondents have submitted that inquiry in the matter was entrusted to Sri Pyarey Lal. The Inquiry Officer after proper inquiry submitted his preliminary inquiry report on 26.10.1999 to the Superintendent of Police. The said preliminary inquiry report was not found complete and clear by the Superintendent of Police as such he again directed to Inquiry Officer, vide order dated 2.11.99 to submit a clear and detailed inquiry report along with the statements of the witnesses. The inquiry officer than again submitted his inquiry report on 18.11.99. The Inquiry officer found the accused guilty

of the charges leveled against him and recommended taking necessary action according to rules. After receiving the preliminary inquiry report the competent authority issued a show cause notice on 30.11.1999 to the petitioner. The petitioner filed his reply on 6.12.1999. The reply submitted by the petitioner was not found satisfactory and accordingly impugned punishment order has been passed against the petitioner.

The grievance of the petitioner is that the respondents have passed the impugned orders in complete disregard of the principles of natural justice, as adequate opportunity of hearing was not provided to the petitioner. Further no opportunity to cross-examine the complainant and other witnesses was provided to the petitioner.

In this case the alleged incident had taken place on 9.10.1999, while Head Constable Dhan Singh was counting and the petitioner brought to his notice that five constables were absent from duty, while the show cause notice was issued to the petitioner on 30.11.1999. This delay in issuing show cause notice has not been explained by the prosecution.

The Inquiry Officer submitted his report on 26.10.1999 but the Superintendent of Police, Pithoragarh vide letter dated 2.11.1999 directed the Inquiry Officer to submit further Inquiry report. Thus the Inquiry Report on the basis of which disciplinary action was taken against the petitioner was submitted under the influence and dictate of the Disciplinary Authority, which cannot be said to be free from any bias.

The learned counsel has further submitted that the disciplinary authority failed to appreciate his aspect of the matter that the petitioner was deprived of the opportunity of

adducing evidence in the Inquiry and to cross-examine prosecution witnesses and, therefore, adequate and reasonable opportunity was not afforded to the petitioner to defend himself against the Disciplinary Inquiry proceedings. According to the counsel, the impugned orders of punishments passed by the respondents are vitiated in law being violative of Article 311(2) of the Constitution of India. Article 311 (2) of the Constitution of India reads as under.

Article 311(2) of the Constitution of India provides for giving reasonable opportunity of hearing, which reads as under:

> "311 (2). No such person as aforesaid shall be dismissed or removed on reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect those charges."

The Constitution Bench of the Apex court in the case-Khem Chand Vs. Union of India, reported in A.I.R. 1958 SC 300, has explained the term 'reasonable opportunity' occurring in Article 311 of the Constitution of India in the following way:

> *"The reasonable opportunity envisaged by the provision under consideration includes:-*
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> *(a)* ***An opportunity to deny his guilt and establish his innocence,*** *where he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;*
>
> *(b)* ***an opportunity to defend himself by cross-examining the witnesses produced against him*** *and by examining himself or any other witnesses in support of his defence.*
>
> *(c)* **.....**

The same view has been re-iterated by the Apex court in the case-Kashinath Dikshita Vs. Union of India & others,

reported in A.I.R. 1986 Supreme Court 2118. The observations are quoted below:

"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him."

In the present case no opportunity has been given to the petitioner to cross-examine the witnesses or to adduce evidence in his defence.

The petitioner in his reply to the show cause notice has categorically stated that Fire Station Officer Sri Pyare Lal was absent along with five constables at the time of Counting but no action was taken against him and inquiry was entrusted to him against the petitioner, who agitated the question of absent of five persons along with F.S.O. at the time of counting.

The inquiry report as well as the order of punishment is completely silent about the reason, which provoked the petitioner to speak loudly at the time of Counting. The petitioner has categorically mentioned in his reply of show cause notice that he agitated the matter of absence of Fireman Prakash Chandra Pandey, Bipin Chandra Upreti, Chandan Ram, Prakash Chand and Driver Bhim Singh before the Day Officer and asked him to mark absent of these officials. The F.S.O. and F.H.S.O. were also not present at the time of Counting and did not come even after calling by fireman Charan Singh. These

facts have not been considered by the Disciplinary Authority while passing the impugned order.

The Apex court in the case- **Kuldeep Singh Vs. The Commissioner of Police, 1998 Judgments Today 603,** has held that where the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse, the High Court can interfere with the same. The relevant portion of the judgment is reproduced below:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride, the domestic enquiry as well, and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority".

The learned counsel for the petitioner has submitted that even on the factual aspect of the case, no case of misconduct is made out against the petitioner and the disciplinary proceedings were initiated against him on fictitious charges. The Inquiry Officer himself was an interesting party and he

submitted another inquiry report on the direction of Superintendent of Police.

Thus in view of the aforesaid facts and circumstances the order of punishment dated 13.12.1999 passed by the Disciplinary Authority and the order-dated 29.2.2000 passed by the appellate authority cannot be sustained. A writ of certiorari is accordingly issued quashing the impugned orders dated 13.12.1999 and 29.2.2000 passed by the respondent no. 3 and respondent no. 2 respectively.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 25.2.2006 **Rajesh Tandon, J.**

*Dhyani